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SUNPOWER CORPORATION, THOMAS H. WERNER,  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE SUNPOWER SECURITIES  
LITIGATION

Case No. CV 09-5473-RS (JSC)  
(Consolidated)

**CLASS ACTION**

**REQUEST FOR JUDICIAL  
NOTICE FILED IN SUPPORT OF  
DEFENDANTS' REPLY IN  
SUPPORT OF MOTION FOR  
PARTIAL JUDGMENT ON THE  
PLEADINGS REGARDING  
FORWARD-LOOKING  
STATEMENTS AND VAGUE  
STATEMENTS OF CORPORATE  
OPTIMISM**

Judge: Hon. Richard Seeborg  
Courtroom: 3, 17th Floor  
Hearing Date: November 29, 2012  
Hearing Time: 1:30 p.m.

## REQUEST FOR JUDICIAL NOTICE

Defendants SunPower Corporation (“SunPower”), Thomas H. Werner, Dennis V. Arriola, and Emmanuel T. Hernandez (collectively, “Defendants”) have filed a Reply in Support of their Motion for Partial Judgment on the Pleadings Regarding Forward-Looking Statements and Vague Statements of Corporate Optimism (“Reply”). In support of their Reply, Defendants request that the Court take judicial notice, under Federal Rule of Evidence 201, of the document attached as **Exhibit 1** to the Declaration of Andrew S. Bernick in Support of the Reply (“Bernick Declaration”). The document attached to the Bernick Declaration is a document filed with the United States Securities and Exchange Commission (the “SEC”).

## ARGUMENT

Federal Rule of Evidence 201 authorizes a court to take judicial notice of facts that are “not subject to reasonable dispute” and “(1) . . . generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). The contents of the exhibit attached to the Bernick Declaration meet these standards.

### **I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF SUNPOWER’S FILINGS WITH THE SEC.**

The Court should take judicial notice of the contents of **Exhibit 1** to the Bernick Declaration. This exhibit consists of a document that SunPower filed with the SEC. Documents filed with the SEC are matters of public record, and their contents may be judicially noticed. *Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006); *In re Silicon Graphics Sec. Litig.*, 970 F. Supp. 746, 758 (N.D. Cal. 1997) (courts may “take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC as facts capable of accurate and ready determination”); *Brodsky v. Yahoo! Inc.*, 630 F. Supp. 2d 1104, 1111 (N.D. Cal. 2009) (“SEC filings may be judicially noticed”); *In re CNET Networks, Inc.*, 483 F. Supp. 2d 947, 953-54 (N.D. Cal. 2007) (taking judicial notice of contents of public filings).

Further, the Court may consider **Exhibit 1** to the Bernick Declaration regardless of whether it takes judicial notice of the contents of that document because it is incorporated by

reference into Plaintiffs' First Amended Consolidated Class Action Complaint ("FAC") (Dkt. No. 153), or the FAC necessarily relies on it. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *In re Versant Object Tech. Corp. Sec. Litig.*, No. C-98-00299-CW, 2000 U.S. Dist. LEXIS 22333, at \*8-9 (N.D. Cal. May 18, 2000). The Bernick Declaration indicates which FAC paragraphs rely on **Exhibit 1**.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court take judicial notice of the contents of the documents attached as **Exhibit 1** to the Bernick Declaration.

Dated: November 9, 2012

MORRISON & FOERSTER LLP

By: /s/ Judson E. Lobdell  
Judson E. Lobdell

Attorneys for Defendants  
SUNPOWER CORPORATION, THOMAS H. WERNER,  
DENNIS V. ARRIOLA, and EMMANUEL T.  
HERNANDEZ

**ECF ATTESTATION**

I, Andrew S. Bernick, am the ECF User whose ID and Password are being used to file the foregoing document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Judson E. Lobdell has concurred in this filing.

Dated: November 9, 2012

MORRISON & FOERSTER LLP

By: /s/ Andrew S. Bernick  
Andrew S. Bernick